

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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EQUAL EMPLOYMENT OPPORTUNITY : CASE NO.  
COMMISSION, :  
Plaintiff, : WDQ-02-CV-648  
AND :  
KATHY C. KOCH, :  
Plaintiff-Intervenor, :  
VS. :  
LA WEIGHT LOSS, :  
Defendant. :  
-----X

Oral deposition of KRISTI O'BRIEN,  
held at the offices of the Equal  
Employment Opportunity Commission, Bourse  
Building, Suite 400, 111 South  
Independence Mall East, Philadelphia,  
Pennsylvania, on Thursday, August 28,  
2003, beginning at 9:35 a.m., before  
Debra J. Weaver, a Federally Approved  
Registered Professional Reporter,  
Certified Realtime Reporter and Certified  
Shorthand Reporter.

ESQUIRE DEPOSITION SERVICES  
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1 Q. Did she say that she was not  
2 going to follow your instructions?

3 A. I don't recall. I don't  
4 remember if she said that or not. She  
5 told me she disagreed with me. And I  
6 don't remember if after that she said,  
7 but I'll do it or I disagree with you and  
8 I'm going to continue doing it this way.  
9 I don't remember.

10 Q. Okay. So you remember she  
11 disagreed with you but you don't remember  
12 whether she expressed whether or not she  
13 was going to defy your instructions? Is  
14 that your testimony?

15 A. Right. Yes.

16 Q. Don't you think you would  
17 remember that?

18 MR. LANDAU: Objection.  
19 Argumentative.

20 BY MR. PHILLIPS:

21 Q. That's okay. You can  
22 answer.

23 A. I don't remember. I  
24 remember having a conversation with her

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1 and her disagreeing that the agenda  
2 should have been set up this way and that  
3 certain things should come before other  
4 things. That's what I remember about the  
5 conversation. Whether she in the end --  
6 I mean, again, I deal with hundreds of  
7 people, lots of trainers, and at the end  
8 of these kinds of conversations, I have  
9 someone say, well, quite honestly, I'm  
10 going to continue doing it this way  
11 because I think it's more effective, or I  
12 see your point and I'm going to do it the  
13 way you want me to do it. And I don't  
14 remember ultimately what her response  
15 was.

16 Q. Have you ever had anyone  
17 else express to you that they disagreed  
18 with you with respect to the agenda and  
19 how the training should be conducted, any  
20 other trainers express that view to you,  
21 that they disagreed with you?

22 A. Sure.

23 Q. Were any of those trainers  
24 ever fired to your knowledge?

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1 A. No. As a matter of fact, I  
2 mean, it's the opposite. Typically, if I  
3 get feedback like that, then on my next  
4 conference call or in a meeting I will  
5 ask them what they think and if they feel  
6 that the agenda should be changed, if it  
7 would be more effective taught another  
8 way.

9 Q. Because we want to improve  
10 the program?

11 A. Sure. Because if something  
12 is not working, I want to know and I want  
13 to change it. That's one of the reasons  
14 our training programs change a lot  
15 because we're always looking to improve  
16 our training program.

17 Q. So you encourage different  
18 viewpoints to see if there are new ideas  
19 we can use to improve the program, right?

20 A. Yes.

21 Q. So the fact that Ms. Koch  
22 may have disagreed with you regarding the  
23 agenda and how much time you spend on an  
24 item, that fact did not warrant firing?

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1 A. No.

2 Q. Let's talk about the next  
3 item. You mentioned there was an  
4 inconsistency within Mrs. Koch's  
5 territory with respect to chart work-ups.  
6 How did you come to know that there was  
7 such a problem?

8 A. Lynne Portlock told me.

9 Q. Okay. Did you ever have any  
10 personal knowledge of how Ms. Koch was  
11 performing that training with respect to  
12 chart work-ups?

13 A. What do you mean by personal  
14 knowledge?

15 Q. Did you ever see Ms. Koch  
16 performing training on chart work-ups?

17 A. No.

18 Q. Did you ever ask Ms. Koch,  
19 describe for me how you're performing  
20 training on chart work-ups?

21 A. I don't remember.

22 Q. Do you recall the specific  
23 problem that Lynne Portlock communicated  
24 to you regarding chart work-ups?

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1 A. She reported those three  
2 performance areas in one conversation,  
3 that these were her issues, that she had  
4 employees that were in the field not  
5 prepared to conduct and feeling competent  
6 and comfortable conducting the daily  
7 visits, the medical histories and the  
8 chart work-ups.

9 Q. Well, did you ever think to  
10 ask Kathy Koch, what are you doing with  
11 respect to chart work-ups? I mean, was  
12 that ever something that -- do you recall  
13 doing that? Do you recall asking her?

14 A. I believe that Lynne had  
15 some coaching sessions. At the point  
16 that I got the call, Lynne had told me  
17 that she already had these conversations  
18 with Kathy and that these things were  
19 being corrected.

20 Q. Okay. But listen to my  
21 question. Have you ever had any  
22 conversation where you asked Kathy Koch,  
23 what are you doing with respect to  
24 training people on chart work-ups? I

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1 observe Kathy Koch performing training on  
2 the issue of medical histories?

3 A. No.

4 Q. Did you ever look at a tape  
5 of her performing training?

6 A. No.

7 Q. Artist's rendering of her  
8 performing training?

9 A. No.

10 Q. Did you ever ask Kathy Koch,  
11 what are you doing with respect to  
12 training people on medical histories?

13 A. I don't remember. I'm sure  
14 I would have because, you know, I talked  
15 to Kathy about Lynne calling me and  
16 having these concerns.

17 Q. But do you remember  
18 specifically sitting here today asking  
19 Kathy Koch, how are you training  
20 employees on medical histories?

21 A. I don't remember that. No,  
22 I don't remember it.

23 Q. Did you take any notes of  
24 your telephone conversations with Ms.

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1 know about Lynne.

2 A. I don't remember.

3 Q. Okay. Let's talk about  
4 medical histories. What was the problem  
5 there with medical histories, training on  
6 medical histories?

7 A. The problem, from what I  
8 understood, is that the employees leaving  
9 Kathy's training program did not feel  
10 prepared to conduct medical histories,  
11 daily visits, chart work-ups, PEs.

12 Q. How did you learn of that  
13 problem?

14 A. From Lynne Portlock. And,  
15 evidently, I think at one point she had  
16 employees put in writing that they  
17 weren't prepared, like did a training  
18 evaluation, how prepared were you coming  
19 out of training class, is there anything  
20 that we can do better, something like  
21 that. So I had read training evaluations  
22 from participants in Kathy's training  
23 class.

24 Q. Okay. Did you personally

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1 Koch?

2 A. I don't remember if I did or  
3 not. Most of the time I did. But I  
4 don't remember specifically if I did  
5 that.

6 Q. Most of the time with Ms.  
7 Koch or most of the time --

8 A. In general.

9 Q. With anybody?

10 A. Yes.

11 Q. Where did you keep those  
12 notes?

13 A. I had a notepad, similar to  
14 that.

15 Q. Did you have a procedure for  
16 what you did with those notes?

17 A. No.

18 Q. Did you ever have  
19 circumstances where you took notes of  
20 conversations involving allegations of  
21 training deficiencies other than Ms.  
22 Koch? Do you recall taking notes during  
23 any conversation --

24 A. Yes.

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1 Q. -- other than Ms. Koch?

2 A. Yes.

3 Q. Okay. What did you do with  
4 those notes?

5 A. Well, for a while I'd save  
6 those pads, but then eventually I'd  
7 probably discard them. If it was a  
8 corrective counseling session, if it was,  
9 you know, something that I felt needed to  
10 go into their employee file, I'd put it  
11 in their employee file.

12 Q. Would a training deficiency,  
13 would that fall within the category of  
14 things that need to go in an employee's  
15 file?

16 A. Yes.

17 Q. Do you recall putting any  
18 notes regarding Kathy Koch in her file?

19 A. I don't believe I did.

20 Q. Generally, how long would  
21 you keep those notes?

22 A. Not long. A couple months.

23 Q. Did you ever receive any  
24 instruction from anybody at the company

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1 A. No.

2 Q. Did you talk to Kathy about  
3 those statements?

4 A. I don't remember.

5 Q. And you testified earlier,  
6 you never actually went out and looked at  
7 how Kathy Koch was performing the medical  
8 history training, right?

9 A. Yes.

10 Q. As a matter of fact, you've  
11 never observed her performing any  
12 training, correct?

13 A. Correct.

14 Q. So you were relying on what  
15 Lynne Portlock was telling you, correct?

16 A. Correct. She was her active  
17 supervisor.

18 Q. Did you have other occasions  
19 during that time frame where an area  
20 supervisor contacted you and said, I've  
21 got a problem with a trainer, with their  
22 training performance?

23 A. I don't recall. No. Not  
24 right now.

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1 that you need to keep all of your notes  
2 regarding Kathy Koch, if any?

3 A. No.

4 Q. Okay. So it's fair to say  
5 that, with respect to medical histories  
6 then, that your recollection is that you  
7 got the information on training problems  
8 from Lynne Portlock?

9 A. Yes.

10 Q. Okay. What specifically was  
11 it about the medical history that was  
12 Lynne's concern? Was it what you just  
13 talked about with the employees  
14 complaining that they were not adequately  
15 prepared?

16 A. Yes.

17 Q. Well, you mentioned that you  
18 reviewed the employee statements?

19 A. Yes.

20 Q. Did you talk to the  
21 employees --

22 A. No.

23 Q. -- who wrote those  
24 statements?

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1 Q. Do you recall any instance  
2 ever of that happening in your entire  
3 career?

4 A. Sure. Yes.

5 Q. Okay. And are those some of  
6 the instances we talked about earlier,  
7 for example, Marci Goldshlack? That's  
8 what we're talking about?

9 A. Yes.

10 Q. Other than Marci Goldshlack,  
11 do you remember any instances of an area  
12 supervisor, or a regional supervisor or a  
13 general manager, contacting you and  
14 saying, got a problem with a trainer,  
15 training performance is not good, or  
16 words to that effect, there's a problem  
17 with her training, other than Ms.  
18 Goldshlack and Ms. Koch?

19 A. Yes.

20 Q. Okay. Who are the trainers?

21 A. One I'm thinking of right  
22 now is Laura Terrell. She was New York.  
23 I'd have to think about it. But, yes,  
24 I've received calls in the past about

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1 that you had with respect to Ms. Koch in  
2 1998?

3 A. No.

4 Q. Okay. How are they  
5 different?

6 A. I was not as active with the  
7 trainers as the directors of training are  
8 now or in the last three years. The  
9 person that was giving them feedback,  
10 critiquing them, working with them was  
11 their supervisor.

12 Q. Okay. I want to go back  
13 to -- I think we had covered the problems  
14 you were seeing or the problems that you  
15 were made aware of with respect to Ms.  
16 Koch with respect to inconsistencies with  
17 the agenda in her territory, within her  
18 territory. You also mentioned some  
19 inconsistencies with her approach that  
20 you believe was taking place as compared  
21 to other territories. Because, remember,  
22 where he talked about within the  
23 territory, inconsistency among centers,  
24 and then we talked about -- we set aside

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1 following the agenda, was there any other  
2 specific item that was of concern?

3 A. I believe her approach with  
4 the center level employees and her  
5 ability to get along with them and have  
6 them learn from her. There was a  
7 conflict with the center level employees.

8 Q. Okay. How did you learn of  
9 that?

10 A. Lynne Portlock.

11 Q. What did Lynne say to you  
12 about that issue?

13 A. I don't remember  
14 specifically, but, in general, that her  
15 employees didn't like Kathy, didn't  
16 want -- that she had some requests that  
17 some of her employees did not want her  
18 back in their centers. You know, she  
19 didn't want her employees upset. You  
20 know, she was, you know, afraid of losing  
21 them, some of them quitting over it,  
22 those type of issues.

23 Q. Did she say that someone had  
24 specifically threatened to quit if there

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1 for a moment the inconsistency between  
2 territories. Now I want to go back to  
3 that. What were the problems that you  
4 became aware of on that issue? Was it  
5 the same ones we just talked about?

6 A. Yes. Because our goal was  
7 that our training plan was our training  
8 plan, and that if we had certain topics  
9 outlined for day one, that's what we  
10 wanted taught on day one through day  
11 five. So that we had a way of managing  
12 what was being taught in our training  
13 classes company-wide.

14 Q. Okay. So is it fair to say  
15 that when you talked about the issue of  
16 not following the training agenda that,  
17 regardless of whether we're talking about  
18 consistency between centers or  
19 consistency between territories and  
20 trainers, what you were talking about was  
21 the issues of the program explanation,  
22 chart work-up, medical history, correct?

23 A. Yes.

24 Q. Okay. With respect to

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1 wasn't something done to remedy Ms.  
2 Koch's performance? Did she say that,  
3 someone had been threatening to quit?

4 A. She said that she was  
5 worried about her visiting centers  
6 because she was upsetting them. And the  
7 last thing that she could do is lose  
8 employees over this.

9 Q. Okay. So she said she was  
10 upsetting employees?

11 A. Yes.

12 Q. Did she say what Ms. Koch  
13 was doing that was upsetting people?

14 A. Again, she commented on her  
15 approach, how she approved them.

16 Q. What was wrong with the  
17 approach, according to Ms. Portlock?

18 A. I don't remember  
19 specifically what she said. In general,  
20 it was about her being -- interrupting  
21 them, just as I said earlier, being --  
22 not creating a positive learning  
23 environment.

24 Q. I mean, I understand that